

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 12, 2006

STATE OF TENNESSEE v. JOHN SUELL ANDERSON

Appeal from the Criminal Court for Putnam County
No. 05-0128 Lillie Ann Sells, Judge

No. M2006-01231-CCA-R3-CD - Filed February 26, 2007

The defendant, John Suell Anderson, was arrested for driving under the influence in Putnam County. The defendant filed a motion to suppress claiming that his warrantless arrest was illegal because he had not committed a misdemeanor in the presence of the arresting officers; the trial court denied the motion. The defendant was convicted by a jury of driving under the influence, first offense, a Class A misdemeanor, and received a sentence of eleven months and twenty-nine days suspended to probation after the service of ten days in jail. The defendant now appeals the trial court's denial of his motion to suppress. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE, and ALAN E. GLENN, JJ., joined.

William A. Cameron, Cookeville, Tennessee, for appellant, John Suell Anderson.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; William Gibson, District Attorney General; Marty Savage, Assistant District Attorney General, for appellee, State of Tennessee.

OPINION

At the suppression hearing, the state presented the testimony of three witnesses, Pauline Hamilton and Officers Greg Young and Craig Wilkerson of the Cookeville Police Department. Pauline Hamilton testified that, shortly before 8:00 p.m. on January 24, 2004, she was at home when she heard a loud noise in her front yard. Upon investigation, she saw a dark-colored truck with a white stripe on the tailgate backing out of her neighbor's yard. She stated that she also noticed that her birdbath had been hit and that the front grill of a truck was now in her yard. She recalled that

she went inside to call the police to report the incident and give them a description of the vehicle. After making the report, she walked down the street with some of her neighbors in an attempt to find the vehicle. She soon found the truck parked in a driveway about three or four houses down from hers. The police arrived within minutes of her call; and she returned home, but only after delivering the partial grill found in her yard to the officers.

Officer Greg Young testified that he responded to the call regarding the accident and found a truck fitting the description parked approximately four houses down from Ms. Hamilton's house. Slumped over the steering wheel, the officer found the driver who was later identified as the defendant, John Suell Anderson. There were no other occupants in the truck. Officer Young noticed that the truck had suffered damage to the front bumper and that part of the grill was missing. He and Officer Craig Wilkerson approached the vehicle and noticed that the defendant was in the driver's seat with the keys in his hand. Officer Young described the defendant as almost unconscious with "a strong odor of intoxicating beverage" about him. When asked to exit the vehicle, the defendant cursed the officers and "kind of struck [Officer Young] in the face with his hand." Eventually, the officers used a taser to subdue the defendant. He recalled that the defendant could not talk or comprehend anything at the scene. The defendant was taken to the hospital and no field sobriety tests were performed due to his incapacitation from both the alcohol and the taser.

Officer Craig Wilkerson testified that when he first arrived at the accident scene he asked the location of the vehicle and was directed to the truck parked in the driveway a few houses down the street. Upon approach, he noticed someone slumped over the steering wheel, either passed out or asleep, and was concerned for the health of the driver, who was later confirmed to be the defendant. He opened the door and attempted to revive the defendant. He described the defendant as having slurred speech and a strong odor of an intoxicant. He stated that the defendant threatened "to kick [his] rear end." He also observed the defendant strike Officer Young, at which time the officers used a taser to subdue the defendant; the officers were then able to effectuate an arrest. Officer Wilkerson stated that, although the defendant was not charged with assault or public intoxication, there was a basis to do so.

The defendant presented no witnesses. At the suppression hearing, the defendant argued that the arrest was illegal because there was no misdemeanor committed in the officer's presence, citing Tennessee Code Annotated Section 40-7-103. Although the statute makes exception for an arrest for driving under the influence at an accident scene, the defendant argued that the arrest was not made at the scene of the accident. Tenn. Code Ann. § 40-7-103(a)(6). The state did not dispute that the defendant was arrested away from the scene but argued that, because the officers had probable cause to arrest him for assault or public intoxication, the warrantless arrest for driving under the influence was legal. See State v. Reynaldo Quintanilla, No. M2002-02440-CCA-R3-CD, 2003 WL 21145569 (Tenn. Crim. App. May, 16, 2003). The trial court found the officers testimony to be credible and held that they had a duty to investigate the accident and, upon finding the defendant slumped over in his vehicle, a further duty to check on the welfare of the defendant. The court found that the officers had a sufficient basis to arrest the defendant for assault when he slapped Officer

Young; and, therefore, the arrest for driving under the influence was legal and the defendant's motion to suppress was denied.

ANALYSIS

In State v. Odom, 928 S.W.2d 18 (Tenn. 1996), our supreme court established the appropriate standard of review when reviewing a trial court's findings of fact and conclusions of law in ruling on a motion to suppress. Under the Odom standard, a trial court's findings of fact on a motion to suppress will be upheld unless the evidence preponderates against them. Odom, 928 S.W.2d at 23. In other words, if the greater weight of the evidence supports the trial court's findings, the findings will be upheld. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997). In reviewing these findings of fact, issues of witness credibility, the weight and value of the evidence, and the resolution of conflicting evidence are matters entrusted to the trial court. Odom, 928 S.W.2d at 23; see also State v. Ross, 49 S.W.3d 833, 839 (Tenn. 2001). Because of this, "the party prevailing in the trial court is entitled the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23. However, our review of the application of the law to the facts is de novo, without any presumption that the determinations made by the trial court are correct. State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001).

The defendant contends that his arrest for driving under the influence was illegal because it was made without a warrant and the alleged offense occurred outside the presence of the arresting officers. Generally, a warrantless arrest for a misdemeanor not committed in an officer's presence is illegal. State v. Duer, 616 S.W.2d 614, 615 (Tenn. Crim. App. 1981). However, Tennessee Code Annotated Section 40-7-103 provides exceptions to this general prohibition and states, in pertinent part, that:

(a) An officer may, without a warrant, arrest a person:

....

(6) At the scene of a traffic accident who is the driver of a vehicle involved in the accident when, based upon personal investigation, the officer has probable cause to believe that the person committed an offense under the provisions of title 55, chapters 8 and 10. The provisions of this subdivision (a)(6) shall not apply to traffic accidents in which no personal injury occurs or property damage is less than one thousand dollars (\$1,000), unless the officer has probable cause to believe that the driver of the vehicle has committed an offense under § 55-10-401[.]

Tenn. Code Ann. § 40-7-103(a)(6) (2003). Tennessee Code Annotated Section 55-10-401 prohibits a person from driving or being in physical control of a motor vehicle on the public roads and highways of the state while under the influence of a drug or intoxicant. Tenn. Code Ann. § 55-10-401. Because the state conceded at the trial court level that the defendant was no longer at the scene of the accident, we need not address the applicability of this exception to the facts before us. However, we note that the statute has now been amended to include the facts as argued by the defendant in this case. See Tenn. Code Ann. § 40-7-103(a)(10) (2006) (amended by 2005 Public

Acts Ch. 296 § 1, effective July 1, 2005) (arrest legal when driver leaves the accident scene and officers have probable cause to believe the driver is intoxicated if the arrest is made within four hours of accident's occurrence).

Our review of the proceedings in the trial court shows that the trial court denied the motion to suppress because the defendant could have been charged with assaulting Officer Young. The trial court relied upon the Quintanilla case, wherein a defendant abandoned his vehicle at the scene of an accident and was found "staggering" up the highway less than a mile away. The defendant was approached by a deputy who noted the defendant's slurred speech and odor of alcohol. The defendant admitted that he had been drinking and also admitted ownership of the wrecked car. After failing two field sobriety tests, the defendant was arrested for driving under the influence and driving with a blood alcohol concentration of greater than .10 percent. The defendant was convicted of the charge of driving with a blood alcohol concentration of greater than .10 percent. On appeal, he asserted that his warrantless arrest was illegal because the charged offenses did not occur in the deputy's presence. This court held that the arrest was legal because the deputy would have been justified in arresting the defendant for public intoxication. Quintanilla, 2003 WL 2114559 at *7; see also State v. Michael G. Waldrum, No. M1999-01924-CCA-R3-CD, 2000 WL 1801861 (Tenn. Crim. App. Dec. 8, 1999) (warrantless arrest for driving under the influence was legal where officer had probable cause to arrest the defendant for public intoxication). We agree with the trial court's findings of fact in this case and its application of the law to those facts. Therefore, we find that the trial court was correct to deny the defendant's motion to suppress.

CONCLUSION

In accordance with the foregoing, we conclude that the trial court correctly denied the defendant's motion to suppress. Therefore, the judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE